

HKEX GUIDANCE LETTER
HKEX-GL108-20 (August 2020)

Subject	Experience and Qualification Requirements of a Company Secretary
Listing Rules and Regulations	Main Board Rules 3.28, 3.29 and 8.17, and Appendix 14 to the Main Board Rules GEM Rules 5.14, 5.15 and 11.07, and Appendix 15 to the GEM Rules
Related Publications	HKEX-LD72-1, HKEX-LD72-2 and HKEX-LD46-2013
Author	IPO Vetting Department

Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

I. Purpose

- 1 This letter provides (i) information on the policy rationale of Main Board Rule 3.28 (GEM Rule 5.14) with regards to the experience and qualification requirements of a company secretary ("**R3.28**"); (ii) guidance on factors considered by the Exchange when granting waivers from R3.28 and conditions to be imposed; and (iii) guidance on factors considered by the Exchange in determining whether the Proposed Company Secretary (as defined in paragraph 7) has attained the Relevant Experience (as defined in paragraph 3(ii)) under R3.28 by the end of the Waiver Period (as defined in paragraph 9).

II. Relevant Listing Rules

- 2 Section F of the Corporate Governance Code and Corporate Governance Report under Appendix 14 to the Main Board Rules (Appendix 15 to the GEM Rules) states that, among other things, the company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board on corporate governance matters, and should be an employee of the issuer and have day-to-day knowledge of the issuer's affairs.
- 3 R3.28 requires a company secretary of an issuer to possess certain academic or professional qualifications, or relevant experience to be considered capable of discharging the functions of company secretary:
 - (i) The academic or professional qualifications to be considered acceptable by the Exchange include (a) a member of The Institute of Chartered Secretaries; (b) a solicitor or barrister under the Legal Practitioners Ordinance; and (c) a

certified public accountant under the Professional Accountants Ordinance (“**Acceptable Qualification**”).

- (ii) The Exchange’s assessment criteria for “relevant experience” includes: (a) length of employment with the issuer and other issuers and the roles the company secretary has played; (b) familiarity with the Rules and other relevant laws and regulations; (c) relevant training taken and/ or to be taken in addition to the minimum requirement under Main Board Rule 3.29 (GEM Rule 5.15) (i.e. 15 hours per financial year); and (d) professional qualifications in other jurisdictions (“**Relevant Experience**”).

- 4 Main Board Rule 8.17 (GEM Rule 11.07) states that an issuer must appoint a company secretary who satisfies R3.28.

III. **Guidance**

- 5 R3.28 was introduced to ensure issuers appointing individuals with the requisite knowledge and experience to assist them in compliance with the Listing Rules and relevant law and regulations in Hong Kong, and to achieve a good corporate governance standard. Individuals can demonstrate compliance with R3.28 by virtue of Acceptable Qualification and/ or Relevant Experience.

- 6 Issuers tend to appoint senior management members, or other employees that had served related roles for a period of time and are familiar with the issuer’s business and affairs as company secretary. However, these individuals may not possess the Acceptable Qualification nor Relevant Experience as required under R3.28. In addition, issuers with principal business activities outside Hong Kong may have practical difficulties in finding a company secretary who possesses day-to-day knowledge of their affairs and the Acceptable Qualification or Relevant Experience. Under such circumstances, these issuers may prefer a company secretary who meets their specific needs (e.g. with special knowledge or skills in the laws and regulations of the jurisdiction in which the issuer operates) or industry-specific experience or expertise) rather than only being familiar with securities regulation in Hong Kong. This is because while it is important for the company secretary of an issuer to be familiar with the relevant requirements in Hong Kong, he/ she also needs to have experience relevant to the issuer’s industry/ operations, nexus to the board and close working relationship with management of the issuer in order to perform the function of a company secretary and to take the necessary actions in the most effective and efficient manner.

- 7 In view of the above, the Exchange has in the past granted waivers to issuers proposing to appoint a company secretary who does not have the qualification and experience required under R3.28 (the “**Proposed Company Secretary**”) for a specified period.

R3.28 waivers

- 8 The Exchange will consider any R3.28 waiver applications based on the specific facts and circumstances. Factors that will be considered by the Exchange include:
 - (i) whether the issuer has principal business activities primarily outside Hong Kong;

- (ii) whether the issuer was able to demonstrate the need to appoint a person who does not have the Acceptable Qualification nor Relevant Experience as a company secretary; and
 - (iii) why the directors consider the individual to be suitable to act as the issuer's company secretary.
- 9 A R3.28 waiver, if granted, will be for a fixed period of time ("**Waiver Period**") and on the following conditions:
 - (i) the Proposed Company Secretary must be assisted by a person who possesses the qualifications or experience as required under R3.28 ("**Qualified Person**") and is appointed as a joint company secretary throughout the Waiver Period; and
 - (ii) the waiver can be revoked if there are material breaches of the Listing Rules by the issuer.
- 10 These conditions are intended to ensure (i) the Qualified Person will assist the issuer to comply with relevant Hong Kong law and regulations and to achieve a good corporate governance standard; and (ii) a reasonable time is given to enable the Proposed Company Secretary to acquire the Relevant Experience required under R3.28 (in particular, the familiarity with the relevant regulatory requirements) over time.
- 11 The length of the Waiver Period will depend on the following factors, but in any case, will not exceed three years as the Proposed Company Secretary is expected to have acquired the relevant qualification or experience required under R3.28 within such period:
 - (i) the Proposed Company Secretary's experience in handling company secretarial matters and his/ her relevant professional qualifications and/ or academic background;
 - (ii) the measures and systems in place to facilitate the Proposed Company Secretary in discharging his/ her duties as a company secretary; and
 - (iii) the issuer's regulatory compliance and/ or material deficiencies/ weaknesses in internal controls.
- 12 New applicants and issuers should disclose in the listing document and the announcement (as the case may be) (i) reasons for a R3.28 waiver; (ii) details and conditions of the R3.28 waiver; and (iii) qualification and experience of both the Proposed Company Secretary and the Qualified Person.
- 13 Before the end of the Waiver Period, the Exchange will not automatically deem the Proposed Company Secretary to be qualified under R3.28. The issuer must demonstrate and seek the Exchange's confirmation that the Proposed Company Secretary has attained the Relevant Experience and is capable of discharging the functions of company secretary under R3.28. The Exchange will assess each case based on the specific facts and circumstances, taking into consideration the following factors:

- (i) compliance history of the listed issuer during the Waiver Period; and
 - (ii) the relevant training undertaken by the Proposed Company Secretary during the Waiver Period.
- 14 For clarity, the expectation is that the issuer should be able to demonstrate that the Proposed Company Secretary, having had the benefit of the Qualified Person's assistance during the Waiver Period, would have acquired the Relevant Experience under R3.28 such that a further waiver would not be necessary.
